City of Lafayette Staff Report

To: City Council

From: Mike Moran, Associate Engineer

Date Written: June 19, 2009

Meeting Date: July 13, 2009

Subject: 3147 Indian Way – Request for brick walkway with steps, brick retaining wall, and brick column/mailbox with light that encroach into the public right-of-way

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Introduction

James W. and Beverly B. Huey own the property at 3147 Indian Way. The Hueys are requesting permission to construct a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light. These additions will require an encroachment agreement because they will be placed in the public right-of-way. Staff recommends approval of the agreement.

Discussion

The property is located at the southwest corner of the intersection of Indian Way and Arrowhead Drive. The City's right-of-way along the subject property is approximately 15 feet behind the existing concrete curb on Indian Way and approximately 10 feet behind the existing concrete curb on Arrowhead Drive. The attached plan (Figure 1) shows the locations of the improvements relative to the right-of-way line, and the existing concrete curb. Dimensioned details for the walkway, steps, retaining wall, and mailbox column with light are shown on Figures 2-5. The steps and retaining wall are both a minimum of six feet behind the face of the existing curb. This setback would allow the City to install most other public improvements, such as a sidewalk, in the future without removing the steps or retaining wall. The brick column and mailbox is very common in this neighborhood and will not affect sight distance for traffic along Indian Way or Arrowhead Drive.

At this time The City does not have plans to widen or to install improvements along Indian Way. However, should the City choose to widen or to install improvements along the edge of the road, the property owners understand that they are responsible for removing their encroaching additions, including the mailbox and walkway. The proposed encroachment agreement which includes this removal condition is attached to

this staff report. Based on these considerations, staff recommends approval of these encroachments as shown on the submittal drawings.

Fiscal Impact

None

Recommendation

Approve the encroachment into the City right of way along the property of 3147 Indian Way and authorize the Mayor to execute an encroachment agreement with the applicant.

Attachment: Agreement for 3147 Indian Way

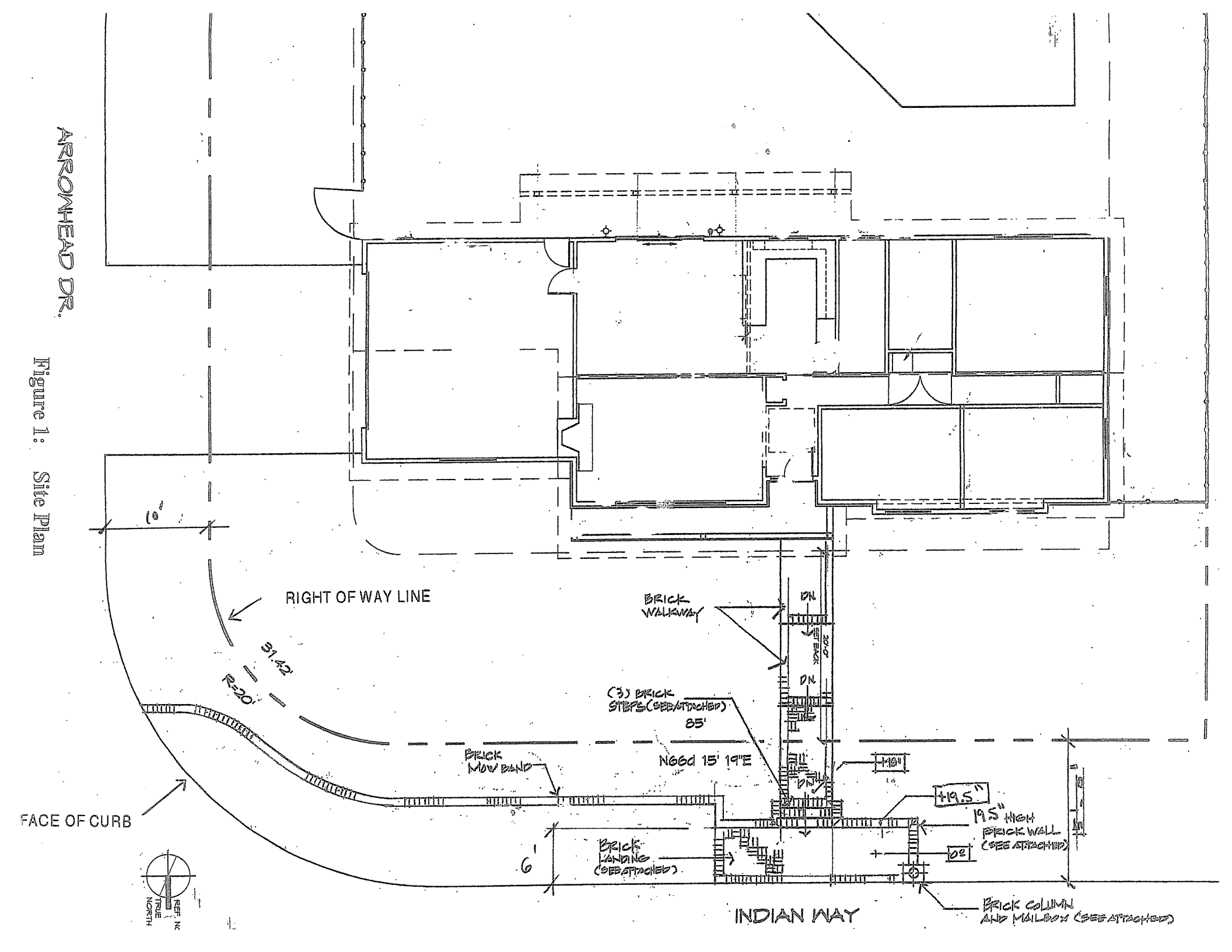

Figure 1: Site Plan

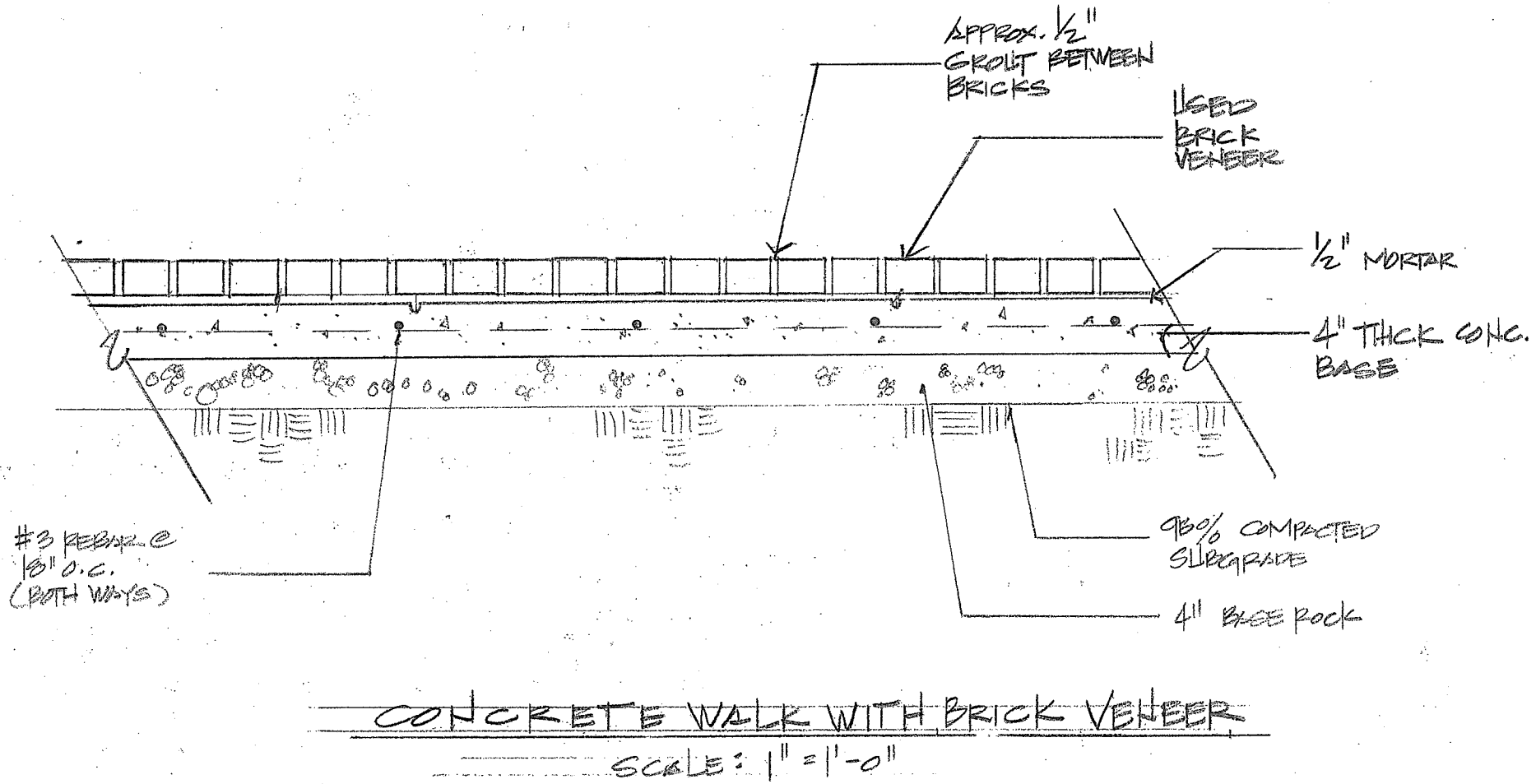
APPROX. ½" GROUT BETWEEN BRICKS
USED BRICK VENEER
½" MORTAR
4" THICK CONC. BASE
#3 REBAR @ 18" O.C. (BOTH WAYS)
90% COMPACTED SUBGRADE
4" BASE ROCK
CONCRETE WALK WITH BRICK VENEER
SCALE: 1" = 1'-0"

Figure 2: Concrete Walk with Brick Veneer

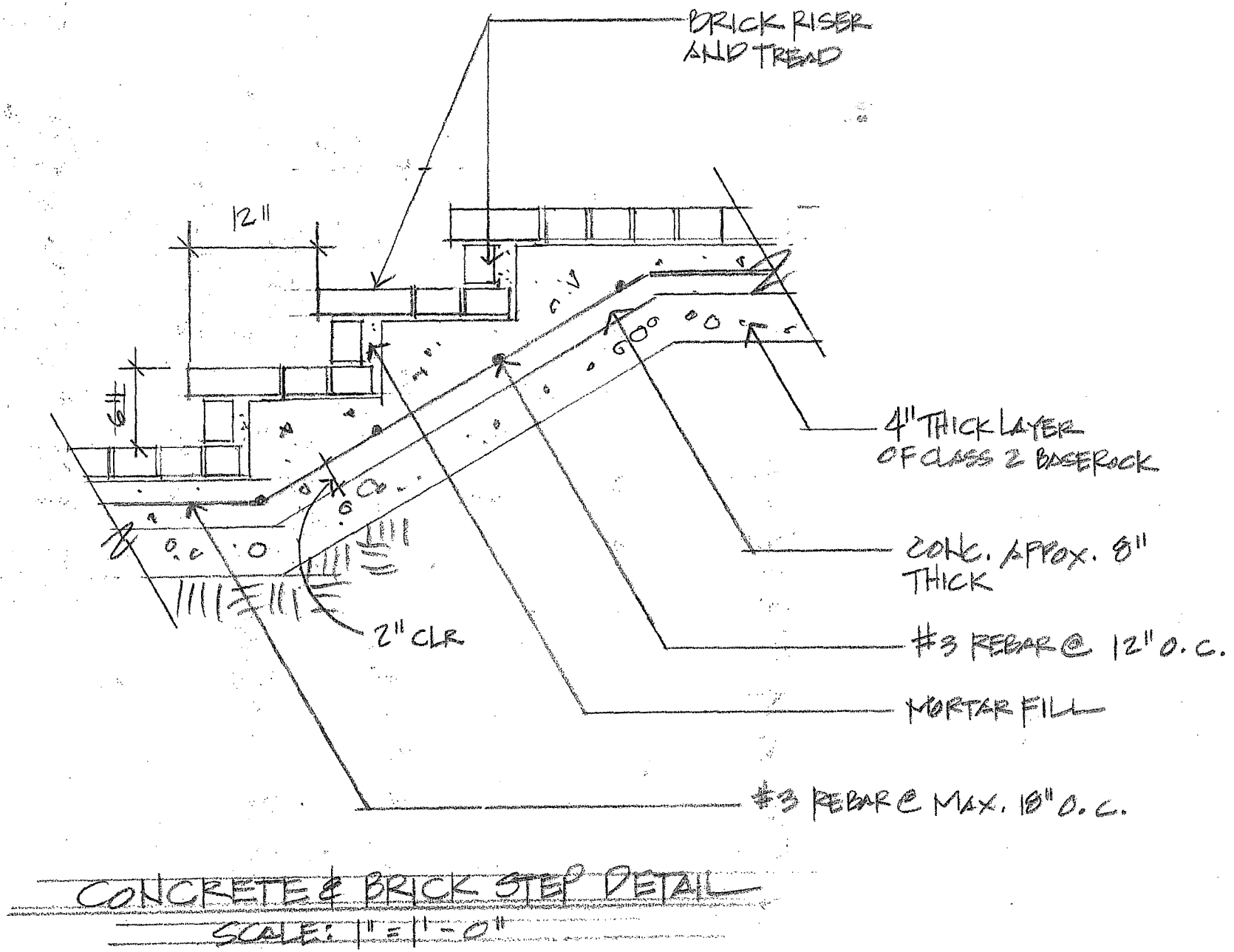
BRICK RISER AND TREAD
12"
4" THICK LAYER OF CLASS 2 BASEROCK
CONC. APPROX. 8" THICK
#3 REBAR @ 12" O.C.
MORTAR FILL
#3 REBAR @ MAX. 18" O.C.
2" CLR
CONCRETE & BRICK STEP DETAIL
SCALE: 1" = 1'-0"

Figure 3: Concrete and Brick Step Detail

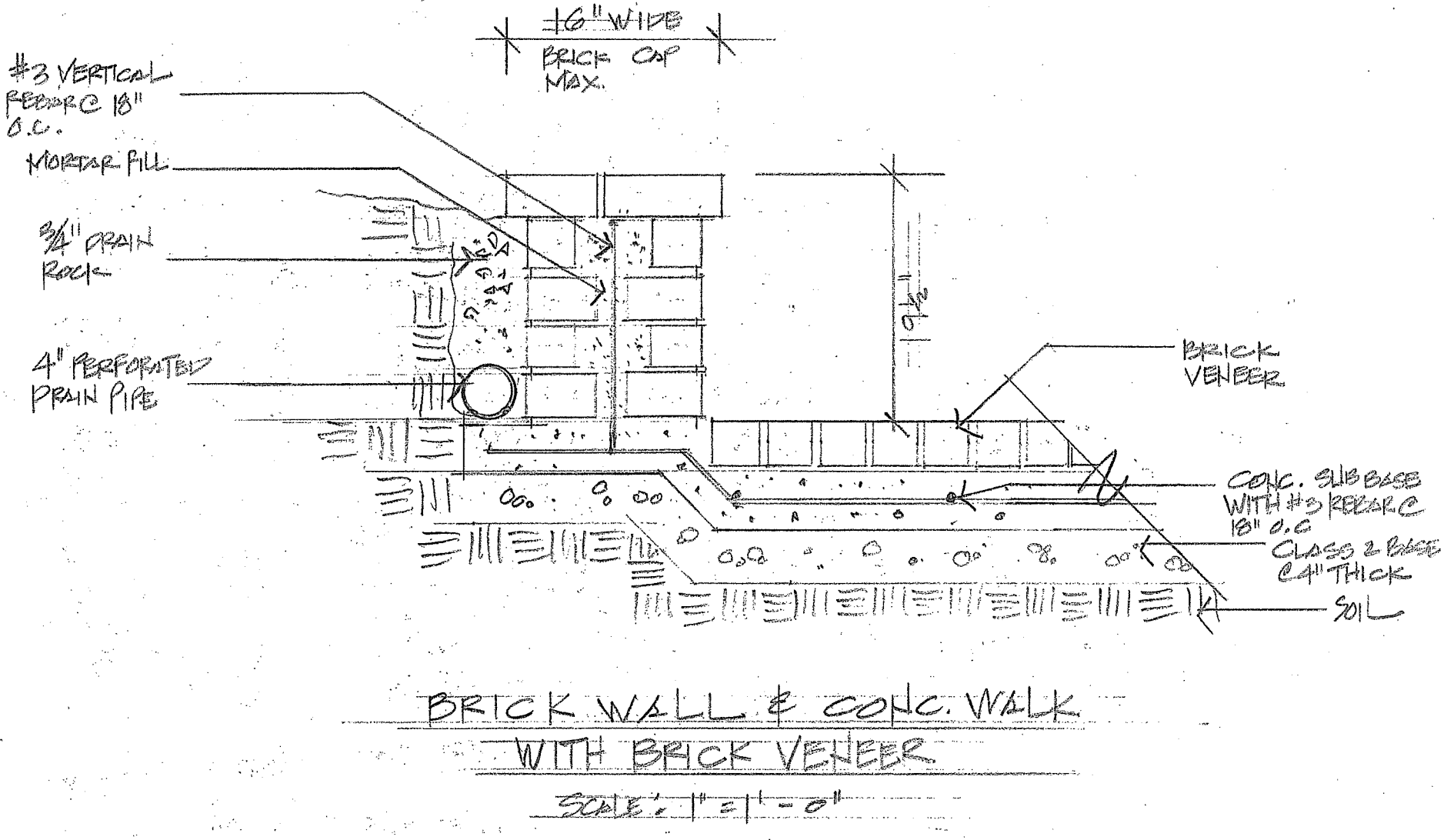

Figure 4: Brick Wall and Concrete Walk

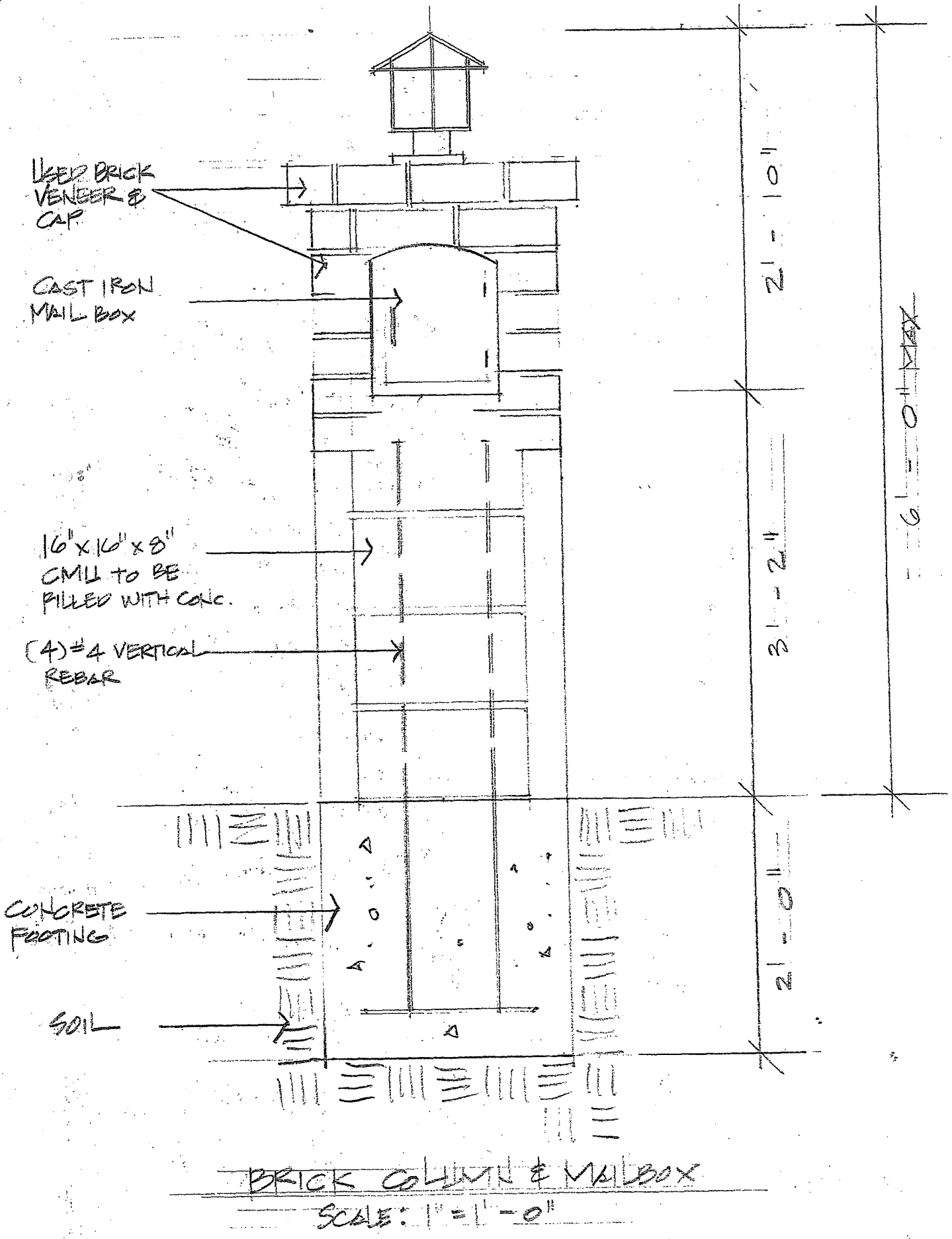

Figure 5: Brick Column and Mailbox

When Recorded Return To:)
)
City Clerk)
City of Lafayette)
3675 Mt. Diablo Blvd., Suite 210)
Lafayette, CA 94549)

AGREEMENT

Encroachment of a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light within a Public Right-of-Way along 3147 Indian Way.

This Agreement is entered into on July 13, 2009 between Beverly B. Huey and the City of Lafayette, a municipal corporation "City".

RECITALS

This agreement is predicated upon the following facts:

A. Property Owner owns the residential property located at 3147 Indian Way Lafayette, California, APN 237-043-002 ("the Property"). The Property is more particularly described in Exhibit "A".

B. Property Owner seeks an encroachment permit to construct a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light which will encroach into the public right-of-way along 3147 Indian Way. In connection with his request for an encroachment permit, Property Owner has submitted plans to the City for the construction and the placement of a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light.

C. City is willing to grant Property Owner an encroachment permit in consideration of Property Owner agreeing to the terms and conditions hereafter set forth.

NOW, THEREFORE, IT IS AGREED between the parties as follows:

1. Permitted Encroachment of a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light

Property Owner is permitted to place a brick walkway with steps, a brick retaining wall, and a brick column/mailbox with light which substantially conform to the plans submitted to the City described in paragraph B above, to encroach into the public right-of-way along 3147 Indian Way, subject to obtaining any building permit which may otherwise be required by the Uniform Building Code.

This encroachment permit is not a building permit and does not grant permission to construct the plan without a separate building permit, if required by the Uniform Building Code adopted by reference by the Lafayette Municipal Code.

2. Risk of Damage and Indemnification.

Property Owner assumes all risk of damage to land and improvements owned by Property Owner, and all risk of other damage to the City or a third party alleged to be caused or contributed to by the placement, permitting or maintenance of the brick walkway with steps, brick retaining wall, and brick column/mailbox with light within the right-of-way as installed and maintained by the Property Owner. Property Owner also assumes the risk of damage to the brick walkway with steps, brick retaining wall, and brick column/mailbox with light installed in the right-of-way.

If the City, its officers, agents or employees are named in any action for damages or inverse condemnation in which it is alleged that the brick walkway with steps, brick retaining wall, and brick column/mailbox with light, permitted as a result of the issuance of the encroachment permit by the City is the cause of injury to persons or property or the cause of the " taking " of property, Property Owner shall defend, indemnify and hold harmless the City, its officers, agents and employees from damages, claims of damage or the amount of a " taking " including reasonable attorney's fees costs, alleged to have resulted from the location of the brick walkway with steps, brick retaining wall, and brick column/mailbox with light within the right-of-way area by the issuance of the encroachment permit.

3. Insurance.

Property Owner acknowledges s/he maintain homeowners insurance and property damage insurance in the amount of at least $300,000 per occurrence covering the encroachment, insuring against liability for damage to property and for injury to or death of any person as a result of the placement or condition of the brick walkway with steps, brick retaining wall, and brick column/mailbox with light. Property Owner shall furnish the City with satisfactory evidence of the insurance and evidence that the carrier is required to give the City at least 10 days notice in advance of the cancellation or reduction in coverage of the policy.

4. Warranty.

Property Owner warrants that as of the date of this Agreement, they are the lawful owners in fee simple of the Property described in Exhibit "A".

5. Duty to Maintain

Property Owner is responsible for maintaining the brick walkway with steps, brick retaining wall, and brick column/mailbox with light described in Paragraph 1. Property Owner shall maintain the brick walkway with steps, brick retaining wall, and brick column/mailbox with light in a safe and attractive condition as an encroachment within the City's right-of-way area. The brick walkway with steps, brick retaining wall, and brick column/mailbox with light may not be modified or otherwise redesigned and reconstructed without prior City approval.

6. City May Maintain or Remove.

If Property Owner fails to meet the standard necessary to maintain the brick walkway with steps, brick retaining wall, and brick column/mailbox with light the City may give written notice of the deficiency to Property Owner who shall have 20 days to make necessary correction, unless the deficiency is deemed by the City to impair sight distance of adjacent vehicular traffic, in which case the correction shall be made immediately. If the correction is not made within time allowed under this paragraph, the City may elect to take the steps necessary to maintain the brick walkway with steps, brick retaining wall, and brick column/mailbox with light, or remove the encroachment entirely. To do this, the City shall serve a notice of its intent for this purpose. The City shall either personally

serve the notice upon Property Owner or mail a copy of it by certified mail at Property Owners last known address or as shown on the tax rolls at least 15 days in advance of the date when it intends to take steps to maintain or remove the brick walkway with steps, brick retaining wall, and brick column/mailbox with light, however, if the City deems the maintenance or removal to be necessary in order to correct a sight distance deficiency for adjacent vehicular traffic, it shall only be required to take reasonable steps to so notify Property Owners 24 hours in advance of the date it intends to perform the maintenance or removal. For this purpose, the City may perform such work, as it considers reasonably necessary and proper to restore and maintain or remove the encroachment. The City may act either through its own employees or through an independent contractor.

7. City's Costs of Maintenance or Removal a Lien.

If the City incurs costs in maintaining or removing the brick walkway with steps, brick retaining wall, and brick column/mailbox with light which encroaches after following the procedure set forth in paragraph 6, the City shall make demand upon Property Owner for payment. If Property Owner fails to pay the costs incurred by the City within 30 days of the date demand is made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 10 percent a year until paid.

8. Additional Remedies.

The City may as an alternative to the lien procedure set forth in Paragraph 7 bring legal action to collect the sums due as the result of the making of expenditures for restoration and maintenance or removal of the brick walkway with steps, brick retaining wall, and a brick column/mailbox with light. Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, Property Owner is responsible for payment to the City of a reasonable sum as attorneys' fees and court costs, together with interest from the date which is 30 days after the City has given its notice under paragraph 7.

9. Revocation.

City may revoke the encroachment permit at any time by 1) giving Property Owners 30 days prior written notice of the intention to revoke and 2) a majority vote of City Council to revoke the permit for any public purpose. In the event of revocation, within 60 days of the date of notice of Council's decision to revoke the permit, Property Owners agree to remove at their expense the brick walkway with steps, brick retaining wall, and/or brick column/mailbox with light described in paragraph 1, which encroaches in the right-of-way area.

10. Notices.

Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed:

City of Lafayette
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94549

Notices to Property Owner shall be addressed:
Beverly B. Huey
3147 Indian Way
Lafayette, CA 94549

When the Property Owner cease to be the owners they shall file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so the subsequent grantee is charged with the obligation under this Agreement.

11. Miscellaneous Terms and Provisions.

(a) If any provision of this Agreement is adjudged invalid, the remaining provisions of it are not affected.

(b) Notice to Property Owners shall be considered to have been given to each party when sent to the address above stated.

(c) This writing, together with the encroachment permit and related documents is the full, final and exclusive statement of the Agreement of the parties.

(d) Property Owner appoints City it's attorney-in-fact to do all acts and things that the City considers necessary to restore or maintain the brick walkway with steps, brick retaining wall, and brick column/mailbox with light.

(e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.

(f) The obligations upon the parties signing this Agreement terminate personally as to them when they convey their interest in the property and file for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner takes title subject to the requirements of this Agreement.

12. Agreement Attaches To Land.

This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETTE

Steven B. Falk, City Manager

PROPERTY OWNER(S)

Beverly B. Huey

* Notarial Acknowledgment Required.

ATTEST:

Joanne Robbins, City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Contra Costa }

On June 23, 2009 (Date) before me, Joanne Lee Robbins, notary (Here Insert Name and Title of the Officer)

personally appeared Beverly B. Hvey (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Joanne Lee Robbins (Signature of Notary Public)

JOANNE LEE ROBBINS
COMM. #1834010
Notary Public-California
CONTRA COSTA COUNTY
My Comm. Exp. FEB 10, 2013

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Exhibit A: Legal Description of 3147 Indian Way, Lafayette CA

The land referred to herein is situated in the sate of California. County of CONTRA COSTA. CITY OF LAFAYETE. described as follows:

LOT 37, AS DESIGNATED ON THE MAP OF TRACT NO. 2539, WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF CONTRA COSTA. STATE OF CALIFORNIA, ON JUNE 13, 1958 IN VOLUME 69 OF MAPS, AT PAGE 48.

ASSESSORS PARCEL NO. 237-043-002

James and Beverly Huey
3147 Indian Way
Lafayette, CA 94549

June 3, 2009

City of Lafayette
3675 Mt. Diablo Blvd. #210
Lafayette, CA 94549
Attention: Michael Moran

RE: 3147 Indian Way, Lafayette, CA
Front Walkway Improvements

To Whom It May Concern:

This letter is to inform the City of Lafayette that we, as owner's of the referenced property, would like to construct the following improvements to our front walkway/entry:

1. To construct a more attractive entrance out of decorative used brick to match the existing house.
2. To construct three 5'-6" wide steps and a 19" high decorative brick wall to retain the existing soil.
3. To construct a brick column/mailbox to tie into the new walkway.
4. To create a smoother transition to the main entrance of the home and lesson the slope of the walk by adding steps at the new wall and utilizing the natural grade of the front yard.

Our ultimate goal is to improve and update the appearance of our home. We believe these improvements are in keeping with the "look" of the neighborhood and look forward to "adding" value to our neighborhood.

Thank you for your consideration and taking the time to review our project.

Sincerely,

James & Beverly Huey
Owners of 3147 Indian Way, Lafayette, CA